

JAN 22 2008

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BRIAN WALTER WEBER,

Defendant - Appellant.

No. 07-30008

D.C. No. CR-04-00035-DWN

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Montana  
Donald W. Molloy, District Judge, Presiding

Submitted January 14, 2008<sup>\*\*</sup>

Before: HALL, O'SCANNLAIN, and PAEZ, Circuit Judges.

Brian Walter Weber appeals from the 120-month sentence imposed after this court vacated one count and remanded for re-sentencing on the count of

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

distribution of methamphetamine in violation of 21 U.S.C. § 841(b)(1)(C). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Weber contends that the district court erred in determining that he was responsible for 10 ounces of methamphetamine. We disagree. The district court judge did not err in relying upon the testimony of Weber's supplier regarding the amount of drugs she sold to him. *See United States v. Alvarez*, 358 F.3d 1194, 1213 (9th Cir. 2004). Moreover, the record demonstrates that the district court erred on the side of caution by choosing the lower amount of the supplier's estimate and ignoring testimony regarding other drug transactions. *See id.*

Weber also contends that the district court erred in denying him a two-level downward adjustment for acceptance of responsibility under U.S.S.G. § 3E1.1. We disagree. The district court did not err because Weber contested his factual guilt at trial, maintained that he was only a methamphetamine user, but then admitted guilt during sentencing. *See* U.S.S.G. § 3E1.1 cmt. n.2; *United States v. Mohrbacher*, 182 F.3d 1041, 1052 (9th Cir. 1999).

**AFFIRMED.**